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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 001375

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EUR FOR DICARLO/HOH/STINCHCOMB, L FOR MANSFIELD, THE HAGUE  
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SUBJECT: SILAJDZIC AND THE "LEGAL OPTION"

REF: A. SARAJEVO 456

[1](#)B. SARAJEVO 1211

Classified By: Ambassador Douglas L. McElhaney. Reasons 1.4 (b), (d).

Summary

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[1](#)1. (C) For several months, Bosniak Presidency member Haris Silajdzic has alluded to legal avenues by which to "annul the legacy of genocide in Bosnia" and compel the international community to "implement" the February 26 verdict of the International Court of Justice (ICJ). Silajdzic's legal vision also informs his current stance on constitutional and police reforms. At a June 11 meeting with the Ambassador, Silajdzic spelled out a strategy involving a convoluted interpretation of both the ICJ verdict and the Draft Articles on the Responsibility of States for International Wrongful Acts. According to Silajdzic, the ICJ verdict, by acknowledging that genocide took place in Srebrenica, also recognized the Republika Srpska as a de facto state and the perpetrator of war crimes. Silajdzic cited the Draft Articles as a basis for penalties against the RS as a state actor and legally compelling the international community to enforce these penalties. Silajdzic also interprets past UN acknowledgments of its failure to prevent the Srebrenica massacre as an admission of responsibility and therefore an obligation to take corrective action. He asserts that the UN is charged with implementing the judgments of its organ, the ICJ, and has frequently stated his intention to submit a formal written request to the UN Secretary General demanding UN implementation of the ICJ ruling. Silajdzic cited the May OIC resolution urging implementation of the verdict as evidence of international community support for his position and stated his intention to continue to work with OIC member states to advance his agenda in the UN. Silajdzic's goal is clear. He seeks to use the ICJ verdict as a legal basis for the elimination of the Republika Srpska and to engineer a confrontation over Srebrenica with the international community in the process. End Summary.

Silajdzic's Legal Strategy

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[1](#)2. (C) In the course of recent months, Bosniak Presidency member, and Party for Bosnia and Herzegovina (SBiH) President, Haris Silajdzic has become increasingly explicit in linking his stance on constitutional and police reforms to the February ICJ verdict. Silajdzic has cited the verdict as the legal basis for his stated goal of changing the name of the Republika Srpska (RS), and subsequent calls for the

elimination of the entity altogether. He has often made non-specific claims that the verdict obliges the international community and the UN to take punitive action against the RS and announced his intention to take up the issue with the UN Secretary General in the runup to the UNGA (Ref B). Until recently however, Silajdzic had provided few details of his legal strategy.

13. (C) On June 11, the Ambassador met with Silajdzic to discuss constitutional reform. This led to an in-depth discussion of Silajdzic's legal interpretation of the ICJ verdict. Silajdzic repeated his familiar position that his opposition to the April constitutional reform package was the result of his determination that a new constitutional arrangement that acknowledges the "genocidal" Republika Srpska would be illegal under international law. He asserted this position has now been given legal force by the ICJ ruling. Silajdzic stated that Bosniaks cannot accept the continued existence of an entity characterized by the ICJ verdict as a "genocidal institution." The name of the Republika Srpska itself, which acknowledges only one group of residents, legitimizes genocide and ethnic cleansing. Similarly, victims of the Srebrenica massacre cannot be expected to be protected by the RS police, "the same institution that killed them," Silajdzic added. In this context, Silajdzic said, his insistence to date on the elimination of entity voting, by which the RS can dissolve the state government and paralyze the country, is not an extreme position but rather the "minimum of minimums."

RS as De Facto State

14. (C) The Ambassador pointed out that the ICJ was not asked, and its verdict did not answer, the question of whether the

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RS was a party to genocide. Silajdzic disputed this, claiming that ICJ references to RS police units constitute acknowledgment of the RS as a de facto state during the war. The Ambassador noted that the Bosniak signatories to the Dayton Accords had accepted the continued existence of the RS. Silajdzic replied that Dayton was signed "under duress" and in the course of an armed conflict. He added that the subsequent issuance of the ICJ verdict had provided a new legal basis from which to retroactively question the terms of Dayton. The Ambassador replied that the only way to revisit the issue would be a unilateral abrogation of the terms of the Accords by Bosniak signatories, and that such step would be unacceptable.

UN Responsibilities

15. (C) Silajdzic stated that the UN is legally obliged to enforce his interpretation of the verdict and he planned to make a formal, written request to the Secretary General to "answer certain questions and take certain steps." He noted that Bosniaks have already begun to explore similar recourse, citing the June 4 filing of a class-action lawsuit by representatives of the "Mothers of Srebrenica and Zepa Enclaves" association at the Dutch Supreme Court. The lawsuit was filed against the Dutch Government and the UN for failure to prevent the Srebrenica massacre. Silajdzic, however, acknowledged the June 8 statement by the UN asserting immunity from the suit under the 1946 Convention on the Privileges and Immunities of the United Nations.

16. (C) Silajdzic stated that "hiding behind immunity is grotesque" and reiterated his conviction that the UN would ultimately endorse his approach. The ICJ was, after all, the Secretary General's court and its verdict was "his

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statement." Silajdzic pointed out that the UN has acknowledged its "responsibility" in contributing to the

genocide in Srebrenica as a demilitarized zone under UN protection. He added that he was aware such a legal challenge would take a long time but added that Bosniaks are willing to wait years for justice under international law.

#### OIC Support

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¶17. (C) Silajdzic also raised the statement on Bosnia included in the May 17 communique of the Organization of Islamic Conference (OIC) plenary in Islamabad. He asserted that the statement, which took note of the ICJ verdict and "called upon the international community to ensure that the decisions of the Court are implemented," endorses his view that UN member states must acknowledge that the RS is an illegal entity. Asked by the Ambassador whether he intended to turn away from the U.S. and EU, to seek OIC member states support, Silajdzic asserted that he would only seek assistance from OIC member states sitting on relevant UN committees or councils.

#### Articles on the Responsibility of States

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¶18. (C) Silajdzic claimed that the 2001 Draft Articles on the Responsibility of States for International Wrongful Acts oblige the international community to address the genocide in Bosnia and to sanction the perpetrators of war crimes, namely the RS. Silajdzic claimed that since the ICJ verdict has acknowledged the RS as a de facto state, the terms of the Articles subject it to penalties. According to Silajdzic, the international community is also obliged by the Articles to deny recognition to the products of genocide, namely the RS. Silajdzic stated Bosniaks expect the United States and the EU to abide by the responsibilities pursuant to these legal obligations.

#### Bosniaks Risking Conflict with the U.S.

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¶19. (C) The Ambassador warned Silajdzic that his approach would inevitably bring him into conflict with the United States and other countries, including the signatories of the Dayton Peace Accords, and Bosnia's future NATO and EU partners. He stressed that Silajdzic's assertions regarding wartime history misrepresented prior U.S. actions and were becoming increasingly offensive. Silajdzic was rapidly creating the impression that it is the Bosniaks who are raising tensions in the country. The Ambassador warned that

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the long-standing close relations between the Bosniaks and the United States could worsen as a result.

¶10. (C) Silajdzic said that he, and Bosniaks, want stability in Bosnia, but that it is unattainable without a "minimum of justice." Bosniaks had resorted to this approach because the international community had been silent in the wake of the ICJ verdict and this failure to respond encouraged the RS to further acts of defiance. He stated that he was disappointed in the ICJ verdict and believed it should have implicated Serbia in the genocide. However, he had accepted the ruling as it was delivered but insisted on its full implementation. Silajdzic asked rhetorically what purpose the Court serves if its verdicts are not implemented.

#### Kosovo

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¶11. (C) Silajdzic stated that when he appeals to the United Nations, he intends to draw parallels between Kosovo and Bosnia. The international community was supporting the application of international law to address long-term human rights violations in Kosovo. Bosniaks would ask for nothing more than the application of the same terms here, he said. It seems, Silajdzic said, that international law is

applicable to Kosovo, but not to Bosnia.

Comment

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¶12. (C) Silajdzic is adopting an increasingly confrontational posture vis-a-vis his Serb political rivals, the international community, OHR and the USG. His increasing willingness to pursue legal actions against the UN and other parties is illustrative of this strategy. It is unclear whether Silajdzic believes his legal arguments have merit or he is simply seeking to force the international community to revisit Dayton. When recently asked by journalists whether his legal approach is realistic, Silajdzic replied angrily that he was "tired of dealing with reality." We can only conclude that Silajdzic's "legal" strategy is aimed at further inflaming Bosniak Muslim opinion here, thereby focusing U.S. and international attention on their grievances. It is unfortunate that few observers in Bosnia itself are able to see through the sophistry of his arguments. End Comment.

MCELHANEY